

Editor's note: Reconsideration denied by order dated Oct. 3, 1979; Appealed – dismissed, sub nom. Arjay Oil Co. v. Andrus, Civ.No. 80-0002-W (D.Utah June 16, 1981)

AMERICAN QUASAR PETROLEUM CO.

IBLA 79-260

Decided August 22, 1979

Appeal from decision of the Idaho State Office, Bureau of Land Management, dismissing appellant's protests against the issuance of offers to lease and leases for oil and gas filed by Arjay Oil Company. I-12872 et al.

Reversed and remanded.

1. Administrative Practice – Evidence: Generally – Oil and Gas lease Applications:
Generally

Where a protestant against the issuance of leases, for oil and gas presents evidence demonstrating the existence of a written partnership between joint offers, and the offerors have not complied with the regulations requiring certain showings of partnerships, the offers cannot be honored.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell, & Peterson, Denver, Colorado; Charles L. Stephens, Esq., Cantey, Hanger, Gooch, Munn & Collins, Fort Worth, Texas, all for appellant; R. Dennis Ickes, Stringham, Larsen, Mazuran & Sabin, Salt Lake City, Utah; Steven D. Luster, Williams & Hansen, Salt Lake City, Utah, all for Arjay Oil Company.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

American Quasar Petroleum Company appeals from a decision dated February 9, 1979, by the Idaho State Office, Bureau of Land Management (BLM), dismissing its protest against issuance of leases for oil

and gas offers 1/ filed by Arjay Oil Company in 1977. The decision states the basis of the protest to be:

(1) that Arjay Oil Company did not file the Offers to Lease and Leases for Oil and Gas in its corporate capacity as reflected in Item 5 of the offer form, but as a partner under an oral partnership agreement between Arjay Oil Company and Kent E. Peterson; (2) that based on and the sworn affidavit of Ronald J. Hollberg, Jr., President of Arjay Oil Co., and the sworn affidavit of Kent E. Peterson, that statements of interest filed by Arjay Oil Company and Kent E. Peterson did not accurately reflect the nature and the extent of the interest of each party in the offers; and, (3) based upon these affidavits, the statements of interest filed by Arjay Oil Company and Kent E. Peterson did not set forth the nature of the oral agreement between them.

Arjay Oil Company filed responses to appellant's protest and requested hearing before BLM. BLM concluded in its decision that:

Based upon the material supplied by the parties it is not possible to find that there was a partnership between Arjay Oil company and Kent E. Peterson nor can it be found that those parties did not supply the Bureau of Land Management, within the proper 15-day limit complete statements signed by the parties who had an interest in the offers.

Accordingly, BLM denied the requests for hearings and dismissed the protests.

1/ The serial numbers involved are as follows:

I-12872	I-12890	I-12919	I-12950
I-12873	I-12891	I-12921	I-12951
I-12879	I-12898	I-12933	I-12960
I-12880	I-12899	I-12934	I-12961
I-12881	I-12900	I-12935	I-12962
I-12882	I-12901	I-12936	I-12963
I-12883	I-12903	I-12939	I-12964
I-12884	I-12905	I-12940*	I-12965
I-12885	I-12907	I-12941	I-12966
I-12886	I-12909	I-12943	I-12968
I-12887	I-12911	I-12945	I-12971
I-12888	I-12913	I-12947	I-12973
I-12889	I-12916	I-12948	I-12976

* This Offer to Lease I-12940 was withdrawn on June 24, 1977.

The substance of appellant's challenge to the decision is: there was proof of a partnership arrangement between Arjay and Peterson; that such partnership, and in any event, the nature and extent of the agreement between Arjay and Peterson was not disclosed; and that therefore their offers should be rejected.

It is not disputed that the offers to lease were filed by Arjay Oil Company in its status as a Utah Corporation and that the offer forms contained the statement: "By oral agreement, Kent E. Peterson owns a 50% interest." The offers were accompanied by a statement of interest which provides in pertinent part:

Based upon an oral agreement, the ownership of subject Offer to Lease and Lease for Oil and Gas is as follows:

50% Arjay Oil Company
50% Kent E. Peterson

Arjay Oil company hereby represents that it is a corporation of the State of Utah, qualified to hold oil and gas leases under file No. Utah-0142200 and that its interest in oil and gas leases and offers filed with the Bureau of Land Management does not exceed 246080 chargeable acres, including options, in the State of Idaho.

Kent E. Peterson hereby represents that he is a native born citizen of the United States of America over the age of 21 years and that his interest in oil and gas leases and offers filed with the Bureau of Land Management does not exceed 246080 chargeable acres, including options, in the State of Idaho.

The statements were signed by R. J. Hollberg, Jr., President of Arjay Oil Company, and by Kent E. Peterson.

Appellant's position that a partnership existed between Arjay and Peterson is based on several documents of record. Two such documents are the affidavits, both dated November 4, 1977, of Hollberg and Peterson. The affidavits were filed with the United States District Court for the District of Idaho in an action styled Arjay Oil Company v. Cecil D. Andrus et al. (C-77-1167). The substance of the Peterson affidavit is as follows:

2. * * * during the early part of January 1977, I entered into an agreement with Arjay Oil Company * * * whereby said [Arjay] and I would submit offers to lease and lease applications to the Bureau of Land Management in the State of Idaho * * *.

3. Further, by the terms of Said agreement, [Arjay] and I were to share as partners in the costs of said lease applications, as well as in any profits made as a result of said applications.

In the Hollberg affidavit, the deponent said:

1. That I am the President of Arjay Oil Company, a corporation organized and existing under the laws of the State of Utah that is the Plaintiff in the above-entitled action.

2. That during the early part of January 1977, Arjay Oil Company entered into an agreement with Kent E. Peterson whereby said Arjay Oil Company and Kent E. Peterson would submit Offers to Lease and Lease Applications to the Bureau of Land Management in the State of Idaho. Said offers were to be submitted on lands which are the subject of the above-entitled case.

3. That Arjay Oil company and Kent E. Peterson were to share as partners in the costs of said Lease Applications as well as in any profits made as a result thereof.

4. That Arjay Oil Company is a corporation engaged in the evaluation of geological information on oil and gas properties in the Western United States and as such has a substantial amount of experience and expertise in said geological evaluations.

5. That Arjay Oil company is a corporation engaged in the purchase and sale of oil and gas leases on properties in the western United States and in the business of developing and producing oil and gas from said properties.

6. That by the terms of its partnership agreement with Kent E. Peterson, Arjay Oil Company was to be solely responsible for the management, exploration, evaluation, and development or sale of any properties which the partnership was awarded as a result of said Lease applications. All costs of exploration, evaluation and development of said properties were to be paid by Arjay Oil Company. All geological valuations were to be made by Arjay Oil Company and it was to be the sole decision of said Arjay Oil Company whether to develop, sell, trade, or otherwise use said properties. Arjay Oil Company, by the terms of its agreement with Kent E. Peterson, was in no way accountable to said Kent E. Peterson, with regard to any of its decisions concerning the subject properties, including the price for which they were to be sold.

7. In accordance with the terms of said partnership agreement, all business in connection with said leases was to be conducted in Arjay Oil Company's name.

Appellant also cites a memorandum dated November 8, 1977, filed by Arjay in the previously referred to Idaho District court action. In that memorandum Arjay argued to the court that Kent E. Peterson was not an indispensable party plaintiff to the action. In presenting its argument, Arjay stated that Peterson was only a "dormant" partner and therefore it was not necessary that he be named as a party plaintiff. Arjay sought to buttress its argument with the following quotation from the Idaho Code Annotated, section 53-309(1).

Every partner is an agent of the partnership for the purposes of its business and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, * * *.

Arjay further contended that: "Kent E. Peterson as a partner of Arjay Oil Company is, therefore, bound by the acts of Arjay Oil Company in bringing this law suit," and that,

Where, as in the instant case, as shown by the Affidavit of Ronald J. Hollberg, Jr., on file herewith, all of the partnership business is carried on under one partner's name, the same partner manages the partnership business and is solely responsible for business decisions, it is not necessary to join the dormant partner under common law doctrine.

Appellant's Exh. D, p.4. On November 14, 1977, the deposition of R. J. Hollberg was taken in the Idaho District Court action. The deposition contains the following dialogue concerning a partnership between Hollberg and Peterson:

Q. [By Mr. Stephens] And more recently you filed an affidavit that Arjay and Mr. Peterson are partners in the subject leases?

A. [By Mr. Hollberg] Yes.

Q. Now, when was the partnership agreement entered into?

A. Oh, around the first of the year. [1977]

Q. Was it before the applications were made?

A. Yes.

Q. Are you sure of that?

A. We wouldn't have filed them. I wouldn't have had his name in there as a half-interest owner if he didn't have.

Q. Well, are you sure the partnership agreement was made?

A. Oh, the partnership agreement. It was made up some time later.

Q. The partnership agreement?

A. Well, we normally don't make up a partnership agreement on most of our – my transactions with close individuals –

Q. What is the name of the partnership?

A. There is no name of it, to my knowledge. We might have made a name up at the time we wrote this thing up. It probably was called H&P.

Q. Called what?

A. We have several other partnerships where we use H & P.

Q. Do you have any written documents to evidence the partnership?

A. Yes.

Q. Between you and Mr. –

A. – Mr. Peterson.

Q. On these leases?

A. Right.

Q. Where is that document? May I see a copy of it?

A. I'll have to ask my man to go get one.

Q. Incidentally, we asked for a number of documents today. Have you produced those?

A. What we have is right here. I believe that's it.

(Witness makes a telephone call.)

A. My accountant told me that Mr. Peterson had picked that up and has it with him.

Q. That's the only copy?

A. To my knowledge.

Q. You're a business man [sic] of many years, and you have got a partnership agreement covering two hundred odd thousand acres, and you have only got one copy of an agreement, and you don't have possession?

A. There were three copies, if I recall, and he took all three because we were going to – I don't recall what we were going to do with them, but I trust him.

MR. STEPHENS: Counsel, I deem that within the scope of request for production, this partnership agreement.

THE WITNESS: He will be in here within this weekend.

(Discussion had off the record.)

MR. STEPHENS: Let's please get back on the record.

Q. In an affidavit that's just been filed in this lawsuit, executed by you on what appears to be about the fourth day of November of this year, in paragraph two you state that during the early part of January 1977 Arjay Oil entered into an agreement with Kent E. Peterson whereby – and I'll paraphrase – Arjay and Peterson would submit offers to lease.

This says that you were to share as partners in the costs and profits.

Now, what I'm asking you about are the terms of that agreement that created that partnership?

A. The basic terms are that he put half and I put up half and we take half, just like it was spelled out, as far as interest goes in the applications.

Q. Well, does the partnership have a name? I'll ask that again.

A. I think, if I recall, it was just us as individuals. That is, Kent is an attorney. But I don't remember whether it had a name on it. I really don't.

Q. Did you sign any written partnership agreement?

A. Just that piece of paper, single piece of paper.

Q. And that's the piece of paper that he now has?

A. Yes.

Q. Well, I'm going to want to see a copy of it.

A. Fine.

MR. STEPHENS: Counsel, will you please procure a copy for me and send it to me by mail in the near future?

MR. HANSEN: I sure will.

Q. Now, when was that piece of paper signed?

A. I don't remember the date.

Q. Well, was it signed before you made the applications or afterwards?

A. I believe it was signed before, but I would have to check and see the date. I really don't recall.[2/]

(Deposition, pp 27-30). Arjay has filed an answer to Quasar's statement of reasons. The first argument proffered therein is that Quasar was not adversely affected by the decision appealed from and is therefore not a proper appellant under the regulations. The applicable regulation, however, does not require the prerequisites urged by Arjay. 43 CFR 4.450-2 is entitled "Protests." It provides:

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action therein

2/ No "written agreement" was ever produced. In a letter dated November 30, 1977, to counsel for Quasar, counsel for Arjay stated:

"Upon reviewing their files in search for said agreement, Mr. Peterson and Mr. Hollberg have now recollected that the only written formalization of their partnership agreement was that in connection with each and every lease application that they made in Idaho, they submitted within 15 days of said application a written statement that Arjay Oil and Kent E. Peterson were 50% partners in said applications."

will be taken as is deemed to be appropriate under the circumstances.

Arjay's second argument is that Quasar is in excess of its acreage limitations under 43 CFR 3101.1-5 and that it has failed to disclose other parties in interest.

The short answer to these contentions is that they are irrelevant to the adequacy of the Arjay oil and gas offers. Quasar's oil and gas lease qualifications, or lack of them, are not factors in the consideration of its protest.

The bulk of Arjay's answer reemphasizes its position before BLM, that no partnership between Arjay and Peterson ever existed or now exists. Alluding to the Hollberg deposition, Arjay contends that when Hollberg referred to the term "written partnership" he meant the statements of interest filed with the lease offers.

Finally, Arjay argues that even if a partnership were found to exist, there was full compliance with the filing regulations.

Appellant cites a letter dated June 8, 1978, from counsel for Arjay and Peterson to the director of the Idaho State Office (Appellant's Exh. A). In the letter Arjay requested that certain of the leases in controversy herein be issued to Arjay and Peterson, partners, as the first qualified applicants. As appellant points out, the letter refers six times to Arjay and Peterson as being partners.

On September 15, 1978, both Hollberg and Peterson filed affidavits in response to appellant's protest. Each affiant deposed "that there is not now nor has there ever been, a partnership as contemplated and defined by the laws of the State of Idaho or of the United States between [Arjay and Peterson]" and "[t]hat at no time was there ever an attempt * * * to create a partnership." The affidavits further state:

That the entire oral agreement between [Arjay and Peterson] was set forth in the Statement of Interest, that there was no other agreement, understanding or relationship between [Arjay and Peterson] either oral or written prior to or at the time said offers to lease were filed other than that contained in said Statements of Interest.

[1] In the recent case of Lee S. Bielski, 39 IBLA 211, 222-223 (1979), the Board stated with respect to burden of proof in protest cases:

We think the rule should be that where a protestant supports his contention with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed, but adjudicated on its merits after all available information has been developed.

We believe that appellant met this burden and that the decision appealed from amounts to a summary dismissal of his protest. At the very least, a discussion of the evidence or information before BLM would have been called for. The decision, however, contains little more than BLM's conclusion that no partnership existed between Arjay and Peterson and that the separate statements of interest were properly filed.

In our view, the evidence marshalled by appellant establishes to our satisfaction that a partnership existed between Arjay and Peterson. The alternate denials and affirmances of the existence of a partnership in the Arjay/Peterson documents do not vitiate this conclusion.

The regulation which may be pertinent to the Arjay/Peterson filings is 43 CFR 3102.3-1 which states in its entirety:

§ 3102.3-1 Statements.

(a) If the offeror is an association which meets the requirements of § 3102.1-1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (1) that it is authorized to hold oil and gas leases; (2) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (3) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association setting forth his citizenship and holdings, shall also be furnished. Where such material has previously been filed, a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

(b) Exception. If the offer is made by an association which does not meet the requirements of § 3102.1-1 of this chapter, the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

The regulation referred to in section 3102.3-1 (3102.1-1) states in pertinent part:

§ 3102.1-1 Who may hold interests.

Mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interest

by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; or (d) municipalities. As used in this group, "association" includes "partnership."

We find that Arjay and Peterson constituted a partnership "organized under the laws of the United States or of any State thereof" authorized to hold mineral leases.

In their response to the protest before BLM Arjay and Peterson took the position that they were not an association organized or required to be organized under the laws of any State, that there was "only an oral agreement," and that therefore there could be no "instrument" establishing the association (Response to Protest, p.11). However, the Hollberg deposition, from which we have extensively quoted above, is to the contrary, Mr. Hollberg stating several times that there was in fact a written agreement. We find that a partnership agreement existed and the terms of such agreement were reduced to writing. Thus, even if Arjay and Peterson came under the exception contained in section 3102.3-1(b), since their agreement was written and was not filed with the applications there was no compliance with 43 CFR 3102.7, which requires the filing of such written agreements.

The Board stated in Bielski, supra at 228: "In its adjudication of appeals to determine the rights of parties to receive or preserve interests in Federal lands, this Board has a concomitant obligation to preserve the integrity of the process." In the light of that obligation, we find that the protest is sustained and the Arjay offers unacceptable. This decision in no way should be construed as passing upon the acceptability of the Quasar offers.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the dismissal of appellant's protest is reversed and the cases are remanded to the Idaho State Office for appropriate action consistent herewith.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

